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REMARKS

The Applicants respectfully request reconsideration of this application in view of the above amendments and the following remarks.

35 U.S.C. §102(a) Rejection - Kistler

The Examiner has rejected claims 44-49 and 66-71 under 35 U.S.C. §102(a) as being anticipated by Thomas Kistler, "Continuous Program Optimization", 1999, Ph. D. thesis, Department of Information and Computer Science, University of California, Irvine, CA (hereinafter "Kistler"). Applicants respectfully submit that the present claims are not anticipated by Kistler.

As amended, claim 44 pertains to a method comprising:

"installing an intermediate representation on a target machine; generating and running executable code from the intermediate representation; collecting profile data including collecting details of a hardware configuration of the target machine and sampling the running of the executable code at a controlled rate; processing the profile data when a CPU of the target machine is idle; and recompiling the intermediate representation based on the processed profile data, wherein recompiling comprises using annotations to relate locations in the executable code to the profile data and the intermediate representation".

Kistler does not teach or suggest these limitations of amended claim 44. In particular, Kistler does not teach or suggest recompiling the intermediate representation based on the processed profile data, wherein recompiling comprises using annotations to relate locations in the executable code to the profile data and the intermediate representation.

Applicants admit that Kistler does discuss profiling. See e.g., Sections 2.5 and 5.1 of Kistler. However, Kistler does not teach or suggest that annotations be used to relate locations in the executable code to the profile data and the intermediate representation. For the Examiner's reference, examples of annotations and their usage are discussed on pages 15 through 18 of the present patent application. As discussed therein, annotations may be used to relate locations in the executable code to the profile data and the intermediate representation, as presently recited in claim 44. However, Kistler does not teach or suggest the claimed annotations or the claimed use of the annotations to relate locations in the executable code to the profile data and the intermediate representation.

Anticipation under 35 U.S.C. Section 102 requires every element of the claimed invention be identically shown in a single prior art reference. The Federal Circuit has indicated that the standard for measuring lack of novelty by anticipation is **strict identity**. “*For a prior art reference to anticipate in terms of 35 U.S.C. Section 102, every element of the claimed invention must be identically shown in a single reference.*” *In Re Bond*, 910 F.2d 831, 15 USPQ.2d 1566 (Fed. Cir. 1990)

Accordingly, claim 44 and its dependent claims are believed to be allowable over Kistler.

Independent claims 47 and 66, and their respective dependent claims, are believed to be allowable for similar reasons.

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Conclusion

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance. Applicants respectfully request that the rejections be withdrawn and the claims be allowed at the earliest possible date.

Request For Telephone Interview

The Examiner is invited to call Brent E. Vecchia at (303) 740-1980 if there remains any issue with allowance of the case.

Request For An Extension Of Time

The Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17 for such an extension.

Charge Our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: 10-30-06

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